

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BETTE EAKIN, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.: 1:22-cv-00340-SPB
)	
ADAMS COUNTY BOARD OF)	
ELECTIONS, <i>et al.</i> ,)	
)	
Defendants.)	

**INTERVENOR-DEFENDANTS’ REPLY TO RESPONSE OF PLAINTIFFS TO
INTERVENOR-DEFENDANTS’ CONCISE STATEMENT OF MATERIAL FACTS**

Intervenor-Defendants the Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania respectfully file these Replies to Response of Plaintiffs to Intervenor-Defendants’ Concise Statement of Material Facts, Dkt. No. 320. Intervenor-Defendants reproduce below only the Responses of Plaintiffs to which a reply is warranted and state as follows:

30. Eighteen years later, the General Assembly enacted the date requirement in its current form, providing that “[t]he elector shall then fill out, date and sign the declaration printed on such envelope.” **Ex. 6**, Act of Aug. 13, 1963, P.L. 707, No. 379, sec. 22, § 1304, 1963 Pa. Laws. 707, 736.

- **PLAINTIFFS’ RESPONSE:** Disputed, as the cited provision neither includes the quoted text nor includes a requirement that a voter date the declaration.

Intervenor-Defendants’ Reply: The quoted text and date requirement appeared in § 1306 of the statute cited above. *See* Dkt. No. 285-10 (Ex. 10 to Appendix, Acting Sec’y Ans. 20-21, *Ball v. Chapman*, No. 102 MM 2022 (Oct. 19, 2022)).

41. In that litigation, Acting Secretary Leigh M. Chapman agreed that the signature requirement is valid and mandatory and does not violate the federal materiality provision. **Ex. 10**, Acting Sec’y Ans. 15-23, *Ball v. Chapman*, No. 102 MM 2022 (Oct. 19, 2022).

- **PLAINTIFFS’ RESPONSE:** Disputed. In the cited source, Acting Secretary Chapman neither argued that the signature requirement is “valid”—a term not defined by Intervenor-Defendants—nor that it was mandatory under Pennsylvania law. Secretary Chapman also did not discuss whether the signature requirement violated the federal materiality provision. Instead, she argued that “the voter’s signature on a declaration by itself constitutes the voter’s attestation of their qualifications.” *Id.* at 16-17.

Intervenor-Defendants’ Reply: Plaintiffs’ response confirms that the Acting Secretary represented that the declaration is “sufficient” if it is signed, and that the signature requirement is therefore mandatory. See Dkt. No. 285-10 at 16-17.

45. The date requirement has already been used to detect election fraud. *See Ex. 11*, Tr. of Hearing in *Chapman v. Berks County Bd. of Elections*, No. 355 MD 2022 (Pa. Commw. July 28, 2022), at 100-116, 141-153.

- **PLAINTIFFS’ RESPONSE:** Disputed. This assertion relies on a deposition transcript from another matter, and the first cited page range provides no support for the assertion. As the depositions taken in this matter make clear,¹ Lancaster County would not have counted that ballot because the county had already removed the deceased voter from the voter rolls following notification from the Pennsylvania Department of Health. Pls.’ Concise Statement of

¹ Per the agreement of the parties, and this Court’s Case Management Order, at 2 (ECF No. 227), depositions were taken concurrently with those for *NAACP v. Chapman*, 1:22-cv-339.

Material Facts (ECF No. 289) (“CSMF”) ¶¶ 73-74. The date written on the outer envelope was not required to detect and remove this ballot. *See* CSMF ¶¶ 65-67, 69-72, 75 (outlining evidence that Lancaster County does not use the handwritten date to detect or prevent fraud); *see also* Int-Defs.’ Ex. 12, Aff. of Probable Cause ¶ 2 (“The [decedent’s] ballot . . . was received on April 28, 2022. . . . [Crista Miller] said Teresa J. Mihaliak was removed from the voter rolls on April 25, 2022.”).

Intervenor-Defendants’ Reply: Plaintiffs miss the point when they say that the *Mihaliak* decedent’s ballot would not have been counted due to the decedent’s death. The election fraud in *Mihaliak* was not committed by the decedent but instead by a third party. *See* Dkt. No. 283 ¶¶ 45-50. Plaintiffs do not dispute that the handwritten date of April 26, 2022—which was twelve days after the decedent had passed away—was the only evidence on the face of the ballot indicating that someone other than the decedent had completed the ballot. *See id.* ¶ 49. That Plaintiffs say that the “date written on the outer envelope was not required to detect and remove this ballot” confirms their misunderstanding. The handwritten date was used not to detect a *ballot* submitted by an individual who had passed away in the intervening period, but to detect *fraud* by a third party.

46. Last year, officials in Lancaster County discovered that an individual had cast a fraudulent ballot in her deceased mother’s name in *Commonwealth v. Mihaliak*, No. CR-126-22 (June 3, 2022); *see* Ex. 12, Affidavit of Probable Cause ¶ 2, Police Criminal Complaint, *Commonwealth v. Mihaliak*, No. CR-126-22 (June 3, 2022) (“*Mihaliak* Compl.”).

- **PLAINTIFFS’ RESPONSE:** Disputed. The use of “fraudulent” in this assertion is a legal conclusion. Plaintiffs further dispute the use of “cast” here—no ballot was cast because the deceased voter had been removed from the rolls.

Intervenor-Defendants’ Reply: Plaintiffs do not dispute that attempting to cast a deceased relative’s ballot is illegal and fraudulent. *See* Dkt. No. 283 ¶ 46.

48. Under the Pennsylvania Supreme Court’s current precedent, county boards of elections lack authority to conduct signature comparisons, so they may not check ballots for a non-

matching signature, much less use any non-matching signature to detect fraud by a third party. *See In re November 3, 2020 General Election*, 240 A.3d 591 (Pa. 2020).

- **PLAINTIFFS’ RESPONSE:** Disputed. The Pennsylvania Supreme Court decision cited above “prohibited [county boards of elections] from rejecting absentee or mail-in ballots based on signature comparison conducted by county election officials or employees, or as the result of third-party challenges based on signature analysis and comparisons.” *Id.* at 611.

Intervenor-Defendants’ Reply: Plaintiffs’ response only confirms Intervenor-Defendants’ statement. *See* Dkt. No. 283 ¶ 48.

50. The investigation into the election fraud committed in *Mihaliak* was predicated upon the date supplied on the ballot declaration. *See id.* ¶ 2.

- **PLAINTIFFS’ RESPONSE:** Disputed. That the Mihaliak investigation was “predicated” on the date written on the ballot return envelope is entirely unsupported by the cited source, which confirms only that: (1) Lancaster County received a mail ballot for Teresa J. Mihaliak on April 28; (2) the ballot’s return envelope was dated April 26; (3) Teresa J. Mihaliak passed away on April 14, as confirmed by an obituary and Department of Health records; and (4) Teresa J. Mihaliak was removed from the voter rolls on April 25, *before Lancaster County received her mail ballot*. Far from supporting the assertion that subsequent investigation was “predicated” on the date on the return envelope, the cited source instead demonstrates that the handwritten date was immaterial to the detection and removal of her ballot. *See also Chapman v. Berks Cnty. Bd. of Elections*, 2022 WL 4100998, at *21 n.14 (Pa. Cmwlth. Aug. 19, 2022) (“the ballot at issue had already been separated by the chief clerk

because the scan of the return envelope revealed, through the SURE system, that the elector was deceased”).

Intervenor-Defendants’ Reply: Plaintiffs again miss the point when they say that the *Mihaliak* decedent’s ballot would not have been counted due to the decedent’s death. The election fraud in *Mihaliak* was not committed by the decedent but instead by a third party. *See* Dkt. No. 283 ¶¶ 45-50. Plaintiffs do not dispute that the handwritten date of April 26, 2022—which was twelve days after the decedent had passed away—was the only evidence on the face of the ballot indicating that someone other than the decedent had completed the ballot. *See id.* ¶ 49. That Plaintiffs say that the “handwritten date was immaterial to the detection and removal of her ballot” confirms their misunderstanding. The handwritten date was used not to detect a *ballot* submitted by an individual who had passed away in the intervening period, but to detect *fraud* by a third party.

57. Blair County Board of Elections responded as follows.

a. It received 9,022 mail ballots, and 27 military-overseas ballots. **Ex. 19**, Blair Cnty. Bd.’s Ans. Interrogs. #1.

- **PLAINTIFFS’ RESPONSE:** Undisputed.

b. It set aside 55 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **PLAINTIFFS’ RESPONSE:** Undisputed.

c. It did not receive any undated or misdated military ballots for which the declaration was on the outside of the return envelope. *Id.* at Interrog. #15.

- **PLAINTIFFS’ RESPONSE:** Disputed. The interrogatory, and the county’s response, reference “timely-received military-overseas ballots” that “the voter failed to date . . . or included a date . . . deemed . . . incorrect.” *Id. accord* CSMF App. at App.283 (Ex. J6). The interrogatory does not address whether the declaration itself was on the outside of the return envelope. Furthermore, Plaintiffs object that this information is not material to the claims in this case.

Intervenor-Defendants’ Reply: Blair County’s response expressly says: “With respect to military-overseas voters who requested that mail ballots be mailed to them, the outside of the return envelope contains the declaration with a place for the date, and there were not any that were not dated or were dated wrongly.” Dkt. No. 285-19 at Interrog. #15 (Ex. 19 to Appendix, Blair County Board’s Answers to Interrogatories).

101. Potter County Board of Elections responded as follows.

a. It received 888 mail-in ballots, including 2 military-overseas ballots. Ex. 56,

Potter Cnty. Bd.’s Ans. to Interrogs. #1.

- **PLAINTIFFS’ RESPONSE:** Undisputed.

b. It set aside 11 mail ballots with undated or misdated ballot declarations, not including voters who submitted provisional ballots or ballots with other defects. *Id.* at Interrog. #2.

- **PLAINTIFFS’ RESPONSE:** Disputed. Potter County set aside 14 undated mail ballots, one of which did not include a signature. *Id.*; accord CSMF App. at App.456 (Ex. J39). Intervenor-Defendants’ appear to have subtracted the three provisions ballots received by the county—which the county does not specify as cast by those voters whose mail ballots were undated—from this total.

Intervenor-Defendants’ Reply: In fact, Intervenor-Defendants relied on the list of defective ballots provided by Potter County. Dkt. No. 285-56 at Interrog. #7 (Ex. 56 to Appendix, Potter County Board’s Answers to Interrogatories).

125. That opinion, however, is multiply flawed because Dr. Hopkins’s analyses showed no such thing. *See Ex. 70* at 69:19-21, 71:2-10.

- **PLAINTIFFS’ RESPONSE:** Disputed, as this assertion is conclusory and entirely unsupported, as required by LCvR 56(B)(1) (“A party must cite to a particular pleading, deposition, answer to interrogatory, admission on file or

other part of the record supporting the party's statement . . ."). The cited material implies that Dr. Hopkins did not determine any specific voter's race, educational attainment, household income, or English language proficiency, and leaps to the conclusion that this somehow undermines his analyses. However, Intervenor-Defendants provide neither evidence nor any substantive argument to demonstrate why Dr. Hopkins's analyses are rendered unreliable as a result.

Intervenor-Defendants' Reply: Intervenor-Defendants did not "leap" to the conclusion that Dr. Hopkins's analysis is unreliable but instead demonstrated why Dr. Hopkins's analysis is unreliable based upon his own admissions in his "deposition." LCvR 56(B)(1); Dkt. No. 283 ¶¶ 116-140. Dr. Hopkins did not "imply" that he did not determine any specific voter's race, educational attainment, household income, or English language proficiency; he admitted that he did not do so. *See* Dkt. No. 285-70 at 69:19-21, 71:2-10 (Ex. 70 to Appendix, transcript of Dr. Hopkins's deposition). Dr. Hopkins's analysis therefore cannot, and does not, show that any groups of voters were disproportionately likely to submit mail ballots that were rejected due to failure to satisfy the date requirement. *See* Dkt. No. 283 ¶¶ 116-140.

126. Dr. Hopkins did not determine the race or ethnicity of any voter. *See id.* at 69:19-21, 71:2-10, 97:3-16.

- **PLAINTIFFS' RESPONSE:** Undisputed. However, Plaintiffs object that identifying the race or ethnicity of any specific individual voter is not material to Dr. Hopkins's analyses or conclusions.

Intervenor-Defendants' Reply: Without determining the race of any voter, Dr. Hopkins cannot, and does not, show that voters of any particular race were disproportionately likely to submit mail ballots that were rejected due to failure to satisfy the date requirement. *See* Dkt. No. 283 ¶¶ 116-140.

127. Dr. Hopkins's county-level analysis did not examine the cost to any individual or group of voters of complying with the date requirement. *See id.* at 71:25-72:15.

- **PLAINTIFFS' RESPONSE:** Undisputed, as to the assertion that Dr. Hopkins' county-level analysis did not examine the cost to any individual voter.

However, Plaintiffs dispute the assertion that Dr. Hopkins's county-level analysis did not examine the cost to any group of voters, as that assertion remains unsupported by the cited material. *See, e.g.*, CSMF App. Ex. I ¶¶ 16-20.

Intervenor-Defendants' Reply: Dr. Hopkins admitted at his deposition that he never measured the "actual[] cost of the date requirement" to any voter or groups of voters. Dkt. No. 314-10 at 33:9-11 (transcript of Dr. Hopkins's deposition).

131. Dr. Hopkins admitted that it is not possible from his county-level analysis to determine how much more likely a Black or Hispanic voter is to cast a ballot that does not comply with the date requirement than a white voter. *See id.* at 79:18-80:2.

- **PLAINTIFFS' RESPONSE:** Disputed, as this assertion is not supported by the cited source. *See also* Def-Ints' Ex. 70 at 107:10-17 ("as the African-American population of a voter's block group grows, the probability that that voter casts a ballot set aside for date issues rises by that amount").

Intervenor-Defendants' Reply: Dr. Hopkins admitted that the "county level results" are "by no means dispositive" as to whether "an individual Hispanic voter" is "more likely" "to cast a ballot that does not comply with the date requirement than an individual white voter." Dkt. No. 314-10 at 79:18-80:2. Plaintiffs' response also refers to Dr. Hopkins's *block-group* analysis, but that too confirms Intervenor-Defendants' point. *See* Dkt. No. 283 ¶¶ 116-140.

137. Dr. Hopkins conceded that it is not possible from his individual and block-group level analysis to determine how much more likely a Black or Hispanic voter is to cast a ballot that does not comply with the date requirement than a white voter. *See Ex. 70* at 107:10-17.

- **PLAINTIFFS' RESPONSE:** Disputed, as this assertion is not supported by the cited source, which simply reflects the proposition that "as the African-American population of a voter's block group grows, the probability that that voter casts a ballot set aside for date issues rises by that amount." *Id.*

Intervenor-Defendants' Reply: Plaintiffs' response confirms Intervenor-Defendants' point. At most, Dr. Hopkins expresses an opinion on the likelihood of a voter in a hypothetical block group casting a noncompliant ballot, not the likelihood of an African-American voter casting such a ballot. See Dkt. No. 283 ¶¶ 116-140.

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Respectfully submitted,

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